



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

September 15, 2010

Ms. Janie Willman  
City Secretary  
City of Leon Valley  
6400 El Verde Road  
Leon Valley, Texas 78238

OR2010-14034

Dear Ms. Willman:

You ask whether certain information is subject to required public disclosure under the Public Information Act (the "Act"), chapter 552 of the Government Code. Your request was assigned ID# 393620.

The City of Leon Valley (the "city") received a request for records of all police contact with the requestor's sons. You claim the submitted information is excepted from disclosure under section 552.101 of the Government Code. We have considered the exception you claim and reviewed the submitted information.

Section 552.101 of the Government Code excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Gov't Code § 552.101. This exception encompasses information that other statutes make confidential. You raise section 552.101 in conjunction with section 58.007 of the Family Code, which provides in part:

(c) Except as provided by Subsection (d), law enforcement records and files concerning a child and information stored, by electronic means or otherwise, concerning the child from which a record or file could be generated may not be disclosed to the public and shall be:

(1) if maintained on paper or microfilm, kept separate from adult files and records;

(2) if maintained electronically in the same computer system as records or files relating to adults, be accessible under

controls that are separate and distinct from controls to access electronic data concerning adults; and

(3) maintained on a local basis only and not sent to a central state or federal depository, except as provided by Subchapters B, D, and E.

...

(e) Law enforcement records and files concerning a child may be inspected or copied by a juvenile justice agency as that term is defined by Section 58.101, a criminal justice agency as that term is defined by Section 411.082, Government Code, the child, and the child's parent or guardian.

...

(j) Before a child or a child's parent or guardian may inspect or copy a record or file concerning the child under Subsection (e), the custodian of the record or file shall redact:

(1) any personally identifiable information about a juvenile suspect, offender, victim, or witness who is not the child; and

(2) any information that is excepted from required disclosure under [the Act] or other law.

Fam. Code § 58.007(c), (e), (j). You assert the submitted reports are confidential under section 58.007(c). Upon review, we agree some of the reports involve juveniles engaged in delinquent conduct or conduct indicating a need for supervision occurring after September 1, 1997; therefore, these reports, which we have marked, are subject to section 58.007. *See id.* § 51.03 (defining "delinquent conduct" and "conduct indicating a need for supervision"). However, we find the remaining reports do not involve delinquent conduct or conduct indicating a need for supervision for purposes of section 58.007(c). Therefore, these reports are not subject to section 58.007(c) and may not be withheld under section 552.101 of the Government Code on that basis. Furthermore, the requestor is the parent of some of the juvenile offenders listed in the reports subject to section 58.007(c); therefore, the information pertaining to the requestor's children in these reports may not be withheld under section 552.101 of the Government Code in conjunction with section 58.007. *See id.* § 58.007(e). However, the personally identifiable information concerning any other juvenile suspect, offender, victim, or witness must be redacted pursuant to section 58.007(j)(1). *Id.* § 58.007(j)(1). Therefore, the city must withhold the information pertaining to other juveniles, which we have marked, under section 552.101 of the Government Code in conjunction with section 58.007(j)(1) of the Family Code. In addition, because you assert the remaining information is protected by the doctrine of common-law

privacy and the informer's privilege, we must address whether the information at issue is excepted under section 552.101 on those bases. *See id.* § 58.007(j)(2).

Section 552.101 of the Government Code also encompasses the doctrine of common-law privacy, which protects information that (1) contains highly intimate or embarrassing facts, the publication of which would be highly objectionable to a reasonable person, and (2) is not of legitimate concern to the public. *Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976). The type of information considered intimate and embarrassing by the Texas Supreme Court in *Industrial Foundation* included information relating to sexual assault, pregnancy, mental or physical abuse in the workplace, illegitimate children, psychiatric treatment of mental disorders, attempted suicide, and injuries to sexual organs. *Id.* at 683. This office has also determined common-law privacy protects the identifying information of juvenile offenders. *See* Open Records Decision No. 394 (1983); *cf.* Fam. Code § 58.007. However, as a parent of the minors with the privacy interest, the requestor has a special right of access to information that would ordinarily be withheld to protect the minors' common-law privacy interests, and such information cannot be withheld from him on that basis. *See* Gov't Code § 552.023(b) (governmental body may not deny access to person to whom information relates or person's agent on grounds that information is considered confidential by privacy principles). Accordingly, the city may not withhold any of the remaining information under section 552.101 on the basis of common-law privacy.

Section 552.101 also encompasses the common-law informer's privilege, which has long been recognized by Texas courts. *See Aguilar v. State*, 444 S.W.2d 935, 937 (Tex. Crim. App. 1969); *Hawthorne v. State*, 10 S.W.2d 724, 725 (Tex. Crim. App. 1928). The informer's privilege protects from disclosure the identities of persons who report activities over which the governmental body has criminal or quasi-criminal law-enforcement authority. Open Records Decision No. 515 at 3 (1988). The informer's privilege protects the identities of individuals who report violations of statutes to the police or similar law-enforcement agencies, as well as those who report violations of statutes with civil or criminal penalties to "administrative officials having a duty of inspection or of law enforcement within their particular spheres." Open Records Decision No. 279 at 2 (1981) (citing WIGMORE, EVIDENCE, § 2374, at 767 (McNaughton rev. ed. 1961)). The report must be of a violation of a criminal or civil statute. *See* Open Records Decision Nos. 582 at 2 (1990), 515 at 4-5 (1988). However, the informer's privilege does not apply where the informant's identity is known to the individual who is the subject of the complaint. *See* Open Records Decision No. 208 at 1-2 (1978).

You raise the informer's privilege for the remaining information. However, you do not identify any individual in the information at issue who actually reported a violation of law. Further, you fail to inform this office of any specific criminal or civil statute that the city believes to have been violated. We therefore conclude the city has failed to demonstrate the applicability of the common-law informer's privilege in this instance. Thus, the city may not withhold any of the remaining information under section 552.101 of the Government Code in conjunction with the informer's privilege.

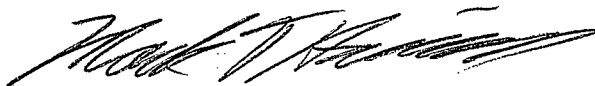
We note a portion of the remaining information is subject to section 552.130 of the Government Code.<sup>1</sup> Section 552.130 excepts from disclosure "information [that] relates to . . . a motor vehicle operator's or driver's license or permit issued by an agency of this state [or] a motor vehicle title or registration issued by an agency of this state[.]" Gov't Code § 552.130(a)(1), (2). Therefore, the city must withhold the Texas driver's license and Texas license plate numbers, which we have marked, pursuant to section 552.130.<sup>2</sup>

In summary, the city must withhold the information pertaining to juveniles who are not the requestor's children, which we have marked, under section 552.101 of the Government Code in conjunction with section 58.007(j)(1) of the Family Code. The city must withhold the Texas driver's license and license plate numbers we have marked under section 552.130 of the Government Code. The city must release the remaining information to this requestor.<sup>3</sup>

This letter ruling is limited to the particular information at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other information or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For more information concerning those rights and responsibilities, please visit our website at [http://www.oag.state.tx.us/open/index\\_orl.php](http://www.oag.state.tx.us/open/index_orl.php), or call the Office of the Attorney General's Open Government Hotline, toll free, at (877) 673-6839. Questions concerning the allowable charges for providing public information under the Act must be directed to the Cost Rules Administrator of the Office of the Attorney General, toll free, at (888) 672-6787.

Sincerely,



Mack T. Harrison  
Assistant Attorney General  
Open Records Division

MTH/em

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<sup>1</sup>The Office of the Attorney General will raise a mandatory exception on behalf of a governmental body, but ordinarily will not raise other exceptions. See Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

<sup>2</sup>We note this office recently issued Open Records Decision No. 684 (2009), a previous determination to all governmental bodies authorizing them to withhold ten categories of information, including a Texas driver's license number and a Texas license plate number under section 552.130 of the Government Code, without the necessity of requesting an attorney general decision.

<sup>3</sup>We note that because the requestor, as the parent of the juveniles whose information is at issue, has a statutory right of access to some of the information in this instance, the city must again seek a decision from this office if it receives another request for the same information from a different requestor.

Ref: ID# 393620

Enc. Submitted documents

c: Requestor  
(w/o enclosures)